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1

APPLICATION NO.

FILING DATE

FIRST NAMED INVENTOR

ATTORNEY DOCKET NO.

1

EXAMINER

ART UNIT

PAPER NUMBER

22

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad. marks

## Office Action Summary

Application No.

08/809,650

Examiner

Applicant(s)

Group Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE  
MAILING DATE OF THIS COMMUNICATION.

3

MONTH(S) FROM THE

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on

7/12/01

This action is FINAL.

Since this application is in condition for allowance except for formal matters, **PROSECUTION AS TO THE MERITS IS CLOSED** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 25 - 40

Of the above claim(s) 27 & 35 - 40

is/are pending in the application.

is/are withdrawn from consideration.

Claim(s)

is/are allowed.

Claim(s) 25, 26 & 28 - 34

is/are rejected.

Claim(s)

is/are objected to.

Claim(s)

are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is approved disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All "Some" None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number)

received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received:

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s).

Interview Summary, PTO-413

Notice of References Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other

## Office Action Summary

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Claims 25-40 are pending in this application. Claims 27 and 35-40 are withdrawn from consideration as being drawn to a non-elected species. Claims 25, 26, 28-30, 31-33 and 34 are considered below.

The request filed on March 12, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/809,650 is acceptable and a CPA has been established. An action on the CPA follows.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States

Claims 25, 26, 28-30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Schreck et al. for reasons of record

Claims 25, 26, 28-30 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Masihi et al. for reasons of record

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

Claims 31-33 rejected under 35 U.S.C. 103(a) as being unpatentable over Masihi et al. for reasons of record.

It is noted by the examiner that a T-tropic HIV-1 does not exclude tropism for monocytes and/or macrophages and *vis versa* since tropism has to do with an affinity for a particular cell type. In general, HIV-1 exhibits tropism for both T-lymphocytes and monocytes/macrophages

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since the respective cells are positive for CD4+ receptors. That instant preliminary experiments were carried out in monocyte culture is meaningless with respect to T-lymphocyte tropism. It is also noted that the term "a principal ingredient" is virtually meaningless since other "principal" or important ingredients are not excluded and it has not been defined in the specification; thus, the term is therefore interpreted in light of its broadest reasonable meaning. Does "principal" refer to quantity or ingredient primarily responsible for a particular function or outcome? Again, the specification fails to provide a definition and the claims fail to exclude additional "principal" ingredients.

This is a continuation (CPA) of applicant's earlier Application No. 08/809,650. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laurie Scheiner, whose telephone number is (703) 308-1122. Due to a

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flexible work schedule, the examiner's hours typically vary each day. However, the examiner can normally be reached Monday thru Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.

Correspondence related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Official communications should be directed toward one of the following Group 1600 fax numbers: (703) 308-4242, (703) 305-3014, (703) 872-9306 or (703) 872-9307. Informal communications may be submitted directly to the Examiner through the following fax number: (703) 746-5226.

LSC  
Laurie Scheiner/LAS  
September 9, 2001

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LSC 9/9/01